

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

| | | |
|---------------------------------------|---|---------------------------|
| GERALD P. CZUBA, CURTIS |) | |
| CZAJKA, and RICHARD PELECKIS, |) | |
| Individually and on behalf of a Class |) | |
| of others similarly situated, |) | |
| |) | Case No. 09-CV-0409 (WMS) |
| Plaintiffs, |) | |
| |) | Hon. William M. Skretny |
| v. |) | |
| |) | |
| IKO MANUFACTURING, INC., |) | |
| IKO INDUSTRIES, LTD., |) | |
| IKO SALES, LTD. |) | |
| IKO PACIFIC, INC., and |) | |
| IKO CHICAGO, INC., |) | |
| |) | |
| Defendants. | | |

**NOTICE OF JOINT MOTION TO STAY PROCEEDINGS
PENDING DECISION
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

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|---------------------|---|
| Moving Party: | Plaintiffs, Gerald P. Czuba, Curtis Czajka, Richard Palekis, and Defendants, IKO Manufacturing, Inc., IKO Pacific, Inc., and IKO Chicago, Inc. |
| Date and Time: | At a date and time to be determined by the Court. |
| Place: | U.S. Courthouse, 68 Court Street, 4 th Floor, Buffalo, New York |
| Supporting Papers: | Declaration of Joseph W. Dunbar and Shawn J. Wanta in support of joint motion to stay proceedings; memorandum of law |
| Relief Requested: | An order staying all proceedings pending a decision in this action by the Judicial Panel on Multidistrict Litigation. |
| Grounds for Relief: | This Court has the inherent power to stay proceedings before it while a motion is pending before the multidistrict litigation panel pursuant to 28 U.S.C. §1402 |

Answering Papers: If any, are required to be served at least three business days prior to the return date of this motion, in accordance with Local Rule 7.1(c).

Oral Argument: Not requested.

Dated: September 22, 2009

Jointly and respectfully submitted,

GERALD P. CZUBA,
CURTIS CZAJKA, and
RICHARD PELECKIS,

IKO MANUFACTURING INC.,
IKO PACIFIC INC., and
IKO CHICAGO INC.,

By: /s/ Shawn J. Wanta
One of Their Attorneys

By: /s/ Joseph W. Dunbar
One of Their Attorneys

Clayton D. Halunen
Shawn J. Wanta
HALUNEN & ASSOCIATES
1650 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Tel: 612-605-4098
Fax: 612-605-4099

Joseph W. Dunbar
DAMON MOREY LLP
200 Delaware Avenue, Suite 1200
Buffalo, New York 14202
Tel: 716-858-3732
Fax: 716-856-5510

Charles J. LaDuca, Atty. No. 3975927
Brendan S. Thompson
CUNEO GILBERT & LADUCA, LLP
507 C. Street NE
Washington, DC 20002
Tel: 202-789-3960
Fax: 202-789-1813

David G. Jay
LAW OFFICES OF DAVID G. JAY
69 Delaware Avenue, Suite 1103
Buffalo, New York 14202
Tel: 716-856-6300

Robert J. Shelquist
LOCKRIDGE, GRINDAL & NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, Minnesota 55401
Tel: 612-339-6900
Fax: 612-339-0981

Charles Schaffer
Arnold Levin
LEVIN, FISHBEIN & BERMAN
510 Walnut Street – Suite 500
Philadelphia, Pennsylvania 19106
Tel: 215-592-1500
Fax: 215-592-4663

Michael A. McShane
AUDET & PARTNERS, LLP
221 Main Street, Suite 1460
San Francisco, California 94105
Tel: 415-568-2555
Fax: 415-576-1776

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| IKO CHICAGO, INC., |) | |
| |) | |
| Defendants. |) | |

**DECLARATION IN SUPPORT OF
JOINT MOTION TO STAY PROCEEDINGS PENDING DECISION
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

Plaintiffs Gerald P. Czuba, Curtis Czajka, and Richard Peleckis (collectively, “Plaintiffs”) and Defendants IKO Manufacturing Inc., IKO Pacific Inc., and IKO Chicago Inc. (collectively, the “Moving Defendants,” and together with Plaintiffs, the “Moving Parties”), jointly move this Court to stay all proceedings in this action pending a decision by the Judicial Panel on Multidistrict Litigation (“JPML”) on the Moving Defendants’ pending motion to transfer this and three other putative class actions for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 (“MDL Motion”). In support of this motion, the Moving Parties submit a supporting legal memorandum, and further state as follows:

1. This case is one of four putative class actions currently pending in four federal district courts in New York, Illinois, New Jersey, and Washington:

A. *Czuba v. IKO Manufacture, Inc.*, Case No. 1:09-cv-00409-WMS
(Western District of New York)

- B. *McNeil v. IKO Manufacturing, Inc.*, Case No. 1:09-cv-04443
(Northern District of Illinois)
- C. *Zanetti v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-02017-DRD-MAS
(District of New Jersey)
- D. *Hight v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-00887-RSM
(Western District of Washington)

2. The plaintiffs in these actions allege that roofing shingles manufactured by the Moving Defendants and installed on homes purchased by the plaintiffs failed prematurely. Collectively, these four actions are referred to as the “IKO Roofing Shingle Actions.”

3. On August 6, 2009, the Moving Defendants submitted for filing with the JPML their MDL Motion seeking to transfer the IKO Roofing Shingle Actions for coordinated or consolidated pretrial proceedings. On August 27, 2009, Plaintiffs responded to the MDL Motion, and joined in the request for transfer of the IKO Roofing Shingle Actions. The Moving Parties therefore agree that the IKO Roofing Shingle Actions should be transferred.

4. The Moving Parties respectfully request the entry of a stay of pretrial proceedings in this action pending a decision by the JPML on the MDL Motion. The plaintiffs and the Moving Defendants are contemporaneously filing similar motions for a stay in the other three IKO Roofing Shingle Actions.

5. Courts routinely exercise the inherent authority to stay pretrial proceedings during the pendency of a motion to transfer pretrial proceedings pursuant to 28 U.S.C. § 1407. In fact, “a majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997) (citing cases). That is because interim stays: (1) promote judicial economy; and (2) avoid inconsistent results among district judges in different district courts. *Bd. of Trs. For*

the Teachers' Ret. Sys. of the State of Ill. v. WorldCom, Inc., 244 F. Supp. 2d 900, 905-06 (N.D. Ill. 2002) (finding that “the interests of judicial economy and the threat of inconsistent rulings” favor a stay of all pretrial proceedings pending the JPML’s transfer decision).

6. As explained in greater detail in the supporting memorandum, a stay here will serve both such goals. First, the requested stay will conserve the resources of this Court and promote judicial economy. Second, temporarily staying proceedings in this action will eliminate the risk that inconsistent decisions would be reached simultaneously by different district judges on common legal and factual pretrial issues in the IKO Roofing Shingle Actions, including regarding a motion to dismiss or a motion for class certification.

7. In addition, the Moving Parties agree that staying this proceeding for a short amount of time will not unfairly prejudice any of the parties to this litigation because it is still in the early stages. A complaint has been filed, but no responsive pleading has been filed and no discovery has been taken. Indeed, this Court has already entered an order staying the time for IKO Manufacturing Inc. to answer or otherwise plead until the JPML rules on the MDL Motion. [Dkt. # 31].¹

8. Staying these proceedings will also serve as a courtesy to the judges on the JPML because it will allow them a reasonable amount of time to rule on the MDL Motion.

WHEREFORE, for the reasons set forth above, and for the additional reasons set forth in the accompanying memorandum of law, Plaintiffs and the Moving Defendants jointly request that the Court stay all pretrial proceedings pending the JPML’s decision on the MDL Motion.

¹ The courts in *McNeil* (N.D. Ill.), *Zanetti* (D.N.J.), and *Hight* (W.D. Wash.) have likewise entered orders staying the time for Moving Defendants to answer or otherwise plead until the JPML rules on the MDL Motion.

Dated: September 22, 2009

Jointly and respectfully submitted,

**GERALD P. CZUBA,
CURTIS CZAJKA, and
RICHARD PELECKIS,**

**IKO MANUFACTURING INC.,
IKO PACIFIC INC., and
IKO CHICAGO INC.,**

By: /s/ Shawn J. Wanta
One of Their Attorneys

By: /s/ Joseph W. Dunbar
One of Their Attorneys

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1650 IDS Center
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San Francisco, California 94105
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Fax: 415-576-1776

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2009, I served a copy of the foregoing document to all counsel of record via the ECF/CM document filing system.

/s/ Joseph W. Dunbar

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